

HOUSE BILL NO. 322

INTRODUCED BY R. KOOPMAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE SALE OR OFFERING FOR SALE OF NONCOMMERCIAL MOTOR VEHICLES THAT ARE EQUIPPED WITH EVENT DATA RECORDERS THAT ARE NOT ABLE TO BE DEACTIVATED; PROVIDING THAT A VIOLATION IS CONSIDERED AN UNFAIR TRADE PRACTICE AND SUBJECTING A VIOLATOR TO THE UNFAIR TRADE PRACTICE PENALTIES; PROVIDING CONDITIONS UNDER WHICH INFORMATION STORED ON EVENT DATA RECORDERS MAY BE RELEASED OR TRANSFERRED; SPECIFYING THAT UNAUTHORIZED RELEASE OR TRANSFER OF THE INFORMATION IS AN INVASION OF PRIVACY AND ALLOWING FOR COLLECTION OF DAMAGES; DEFINING "EVENT DATA RECORDER"; AND AMENDING SECTIONS 27-1-221 AND 30-14-224, MCA."

WHEREAS, Article II, section 10, of the Montana Constitution provides that the "right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest"; and

WHEREAS, an increasing number of motor vehicle manufacturers are voluntarily installing event data recorders to monitor vehicle systems and collect information about those systems if the vehicle is involved in a crash; and

WHEREAS, the information collected and stored by event data recorders in noncommercial motor vehicles should be considered private information that is subject to the privacy provisions of the Montana Constitution.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Vehicle with event data recorder not to be sold -- penalty -- data not to be transferred -- damages -- definition. (1) A noncommercial motor vehicle that is equipped with an event data recorder that is not able to be deactivated by the owner of the motor vehicle may not be sold or offered for sale by a motor vehicle dealer in the state.

(2) A violation of subsection (1) is considered an unfair trade practice under Title 30, chapter 14, part 2, and subjects the violator to the penalties provided in 30-14-224.

(3) Information that is stored on an event data recorder is the personal property of the owner of the vehicle in which the owner has a privacy interest and may not be released or transferred to any person who is not the owner of the vehicle without:

(a) the owner's written permission; or

(b) an order of a district court that shows a compelling state interest in the release or transfer of the information.

(4) An act of releasing or transferring information in violation of subsection (3) is an invasion of privacy. The owner of the vehicle may bring a tort action against the person who releases, transfers, receives, or possesses the data, seeking compensatory and punitive damages.

(5) For the purposes of this section, "event data recorder" means a device that is installed by the vehicle's manufacturer for the purposes of monitoring and recording the vehicle's speed, brake, safety, and other systems and for collecting information about those systems.

Section 2. Section 27-1-221, MCA, is amended to read:

"27-1-221. Punitive damages -- liability -- proof -- award. (1) Subject to the provisions of 27-1-220 and this section, reasonable punitive damages may be awarded when the defendant has been found guilty of actual fraud, ~~or actual malice, or a violation of the provisions of [section 1].~~

(2) A defendant is guilty of actual malice if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and:

(a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or

(b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

(3) A defendant is guilty of actual fraud if the defendant:

(a) makes a representation with knowledge of its falsity; or

(b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

(4) Actual fraud exists only when the plaintiff has a right to rely upon the representation of the defendant and suffers injury as a result of that reliance. The contract definitions of fraud expressed in Title 28, chapter 2, do not apply to proof of actual fraud under this section.

(5) All elements of the claim for punitive damages must be proved by clear and convincing evidence.

1 Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the
2 correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence but less
3 than beyond a reasonable doubt.

4 (6) Liability for punitive damages must be determined by the trier of fact, whether judge or jury.

5 (7) (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not
6 admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a
7 verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be
8 determined by the jury in an immediate, separate proceeding and be submitted to the judge for review as
9 provided in subsection (7)(c). In the separate proceeding to determine the amount of punitive damages to be
10 awarded, the defendant's financial affairs, financial condition, and net worth must be considered.

11 (b) When an award of punitive damages is made by the judge, the judge shall clearly state the reasons
12 for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the
13 following matters:

- 14 (i) the nature and reprehensibility of the defendant's wrongdoing;
15 (ii) the extent of the defendant's wrongdoing;
16 (iii) the intent of the defendant in committing the wrong;
17 (iv) the profitability of the defendant's wrongdoing, if applicable;
18 (v) the amount of actual damages awarded by the jury;
19 (vi) the defendant's net worth;
20 (vii) previous awards of punitive or exemplary damages against the defendant based upon the same
21 wrongful act;
22 (viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and
23 (ix) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive
24 damages.

25 (c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters
26 listed in subsection (7)(b). If after review the judge determines that the jury award of punitive damages should
27 be increased or decreased, the judge may do so. The judge shall clearly state the reasons for increasing,
28 decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and
29 conclusions of law, demonstrating consideration of each of the factors listed in subsection (7)(b).

30 (8) This section is not intended to alter the Montana Rules of Civil Procedure governing discovery of

1 a defendant's financial affairs, financial condition, and net worth."

2
3 **Section 3.** Section 30-14-224, MCA, is amended to read:

4 **"30-14-224. Penalties.** (1) A person, whether as principal, agent, officer, or director, who purposely or
5 knowingly violates any of the provisions of 30-14-207 through 30-14-214, ~~or~~ 30-14-216 through 30-14-218, or
6 [section 1] is guilty of an offense for each violation and upon conviction may be fined an amount not more than
7 \$10,000 or imprisoned for a term not to exceed 2 years, or both.

8 (2) A violation of 30-14-205 is punishable by imprisonment for a period of not more than 5 years, and
9 the offender may be subject to a fine in an amount not exceeding \$25,000.

10 (3) When there is a violation of 30-14-216, in addition to the penalty specified in subsection (1), the court
11 before which a conviction is had shall, within 10 days after judgment of conviction is given, forward a certified
12 copy of the judgment to the department of agriculture and that department shall revoke any license issued to
13 the convicted person. A new license may not be granted to the person whose license is revoked or to anyone
14 either directly or indirectly engaged with that person in that business for a period of 5 years."

15
16 NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an
17 integral part of Title 61, chapter 9, part 4, and the provisions of Title 61, chapter 9, part 4, apply to [section 1].

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